IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No.18 of 2006

Date of decision 1.11.2007

Darshan Singh and others Appellants

Vs.

State of H.P. and others Respondents

Coram:

The Hon'ble Mr. Justice V.K.Gupta, Chief Justice

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1]

For the Appellants: Mr.Baldev Singh, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General, with Mr.J.K.Verma, Dy. Advocate General for respondents No.1 to 4.

Mr.Ajay Sharma, Advocate, for respondents No.9 and 23.

Per Rajiv Sharma, J.(Oral)

A challenge has been laid to the judgment of the learned Single Judge dated 22.9.2003 in CWP No.279 of 1999.

The brief facts necessary for the adjudication of this appeal are that the partition proceedings in respect of joint land of the parties commenced in the year 1988. The mode of partition was settled and sanctioned in the month of December, 1990. The final partition was sanctioned by the

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[1] Whether reporter of local papers is allowed to see the judgment?

Assistant Collector in the month of May, 1993. The partition was challenged by the present appellants before the Collector, Una. The Collector Una allowed the appeal.

Dis-satisfied with the order passed by the Collector an appeal was carried before the Divisional Commissioner. The Divisional Commissioner allowed the appeal and set aside the order passed by the Collector. The appellants preferred a revision before the financial Commissioner against the order of the Divisional Commissioner. The Financial Commissioner after taking into consideration the orders passed by the Divisional commissioner as well as on the basis of clause 6 of the mode of partition dismissed the revision on 24.8.1998.

The learned Single Judge by adopting correct process of reasoning has upheld the order passed by the Financial Commissioner dated 24.8.1998. The learned Single Judge had taken into consideration the admission made by the appellants that Khasra No.2816 was allotted to Bhagta and Pyara in accordance with the sanctioned partition. Once the appellants had accepted and conceded to the apportionment so made, hence they cannot be permitted to assail the mode of partition sanctioned by the Assistant Collector. The plea raised by the appellants before the learned Single Judge for the first time that the partition of one of the khasra numbers was stayed by the Director of Consolidation, thereafter the partition proceedings could not have proceeded with, has been rightly rejected. The appellants could not raise the plea for the first time before the learned Single Judge which admittedly has not been taken by them before the authorities below.

Accordingly, there is no merit in this appeal and the same is hereby dismissed. The judgment of the learned Single Judge dated 22nd September, 2003 is upheld.

CMP Nos. 612 and 613 of 2007

Infructuous.

(V.K.Gupta), C.J.

November 1,2007(g) **(Rajiv Sharma),J.**